

MCA 50/12



**U.S. Customs and  
Border Protection**

January 11, 2012

MEMORANDUM FOR: Patrol Agents in Charge  
Rio Grande Valley Sector

FROM:

(b)(6)(b)(7)(C) (b)(6)(b)(7)(C)  
for Chief Patrol Agent  
Rio Grande Valley Sector

SUBJECT: Change to Expedited Removal Threshold Criteria

The Rio Grande Valley (RGV) Border Patrol Sector has modified the Expedited Removal (ER) criteria as it relates to an illegal alien's immigration history. Effective immediately, the arrest threshold for amenable aliens eligible for ER has been lowered from two arrests to a first time apprehension. Upon an alien's arrest, they are amendable for ER proceedings pursuant to the below issued guidance.

(b)(7)(E)

ER grants Border Patrol agents in the field the authority to formally remove certain aliens from the United States without further hearing or review unless the alien indicates an intention to apply for asylum, expresses fear of persecution, a fear of torture or a fear of return to his or her country.

The use of ER orders will have a deterrent effect and make it possible to pursue future criminal prosecution against those who enter the United States in violation of immigration law. In cases where ER can be used, it should accelerate the processing of inadmissible aliens, (b)(7)(E)  
(b)(7)(E)

Subject to limitations discussed below, aliens amenable to ER are:

- Arriving aliens determined to be inadmissible under INA § 212(a)(6)(C) or (a)(7); or
- As designated in 67 Federal Register 68924, aliens who arrive by sea, either by boat or other means, who are not admitted or paroled, and who have not been physically present in the United States for the previous two years; or
- As designated in 69 Federal Register 48877, aliens physically present in the United States without having been admitted or paroled following inspection by a Customs and Border Protection Officer at a designate port-of-entry, and who are encountered by an immigration officer within 100 air miles of the United States international border and who have not established to the satisfaction of the agent that they have been physically present in the United States continuously for the 14 day period immediately prior to the date of encounter.

Expedited Removal will not apply to aliens who are:

- Unaccompanied Alien Children;
- Cubans;
- Verified members of the class action settlement in American Baptist Church (ABC) vs. Thornburg.

ABC class membership is defined solely by nationality and date of the first entry, as follows:

- Any Guatemalan who first entered the United States on or before October 1, 1990; and
- Any El Salvadoran who first entered the United States on or before September 19, 1990.

Eligibility for benefits under the class action settlement, i.e. ABC class membership, may be lost if class members are:

- Identified under National Security Grounds;
- Convicted of an aggravated felony as defined in Immigration and Nationality Act (INA) section 101(a)(43);
- Apprehended at time of entry after December 19, 1990; and
- CIMT with over 180 days in jail (minimum 181).

Aliens who indicate an intention to apply for asylum or who assert a fear of persecution or torture will be interviewed by an asylum officer. Only an asylum officer or immigration judge can determine ineligibility and even after a determination of ineligibility has been made, the class member cannot be removed for 30 days after the determination, in order to have time to challenge the determination in federal court.

The agent should determine whether the alien has a potential benefit under the INA (whether or not an application has been filed) that would provide the alien with relief from removal. In order to preclude denying an alien any potential benefit, the agent will not apply ER in those cases.

Finally, there may be other individuals for whom the use of ER is not appropriate for example, persons who appear to have mental health issues or diminished mental capacity.

Patrol Agents in Charge will review this memorandum with their respective staff and agents to ensure appropriate full use of Expedited Removal for first time apprehensions under the RGV Consequence Delivery System (CDS) Program. Additionally (b)(7)(E) will emphasize that Voluntary Return is the least preferred / least effective consequence for most classifications under CDS and not applicable to Targeted Guides and Criminal Aliens.

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(b)(7)(E) If you have any questions, they should be directed to Assistant Chief Patrol Agent (b)(6)(b)(7)(C) at (956) (b)(6)(b)(7)(C)